HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:25661 OF 2007

Dated:04.12.2007

Between:

The Sirpur Paper Mills Limited
Represented by its Assistant Manager (Excise)
K.V. Satyanarayana.

..Petitioner

And

1. The Commissioner of Customs and Central Excise (Appeals), Hyderabad, L.B. stadium Road, Basheerbagh, Hyderabad and another.

..Respondents.

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HONOURABLE MRS. JUSTICE T.MEENA KUMARI
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WRIT PETITION No:25661 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking to call for the records of the 1st respondent culminating in his order in stay petition No.1/2007, dated 20.11.2007 in Appeal No.32 of 2007 (H-I) and quash the same and direct the 1st respondent to dispose of the appeal on merits.

It is the case of the petitioner that two show cause notices were issued by the 2nd respondent making a total demand of Rs.42,00,429/- on the petitioner. In spite of detailed replies, the 2nd respondent confirmed the duty demand in both the show cause notices. Hence, the petitioner challenged the order of the 2nd respondent before the 1st respondent. The 1st respondent allowed the appeal and remanded the matter back to the 2nd respondent, who in turn passed order in original NO.2 of 2007 confirming the total duty. Aggrieved by the same, the petitioner filed an appeal before the 1st respondent along with an application for waiver of pre-deposit of duty under Section 35-F of the Central Excise Act. The said application was disposed of with a direction to the petitioner to comply with the order of the 2nd respondent by 10.12.2007 and the failure to comply with the direction

would entail dismissal of the appeal without any notice. Having aggrieved by the same, the present writ petition is filed by the petitioner.

Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents and perused the material available on record.

It is the contention of the learned Counsel for the petitioner that an appeal is pending before the 1st respondent and the 1st respondent passed the order in the application for waiver of pre deposit, without affording any opportunity to the petitioner to put forth its case and therefore, the order impugned is liable to be set aside.

In the facts and circumstances of the case and in view of the pendency of the appeal before the 1st respondent and in view of the fact that the condition imposed by the 1st respondent, is not on merits, without expressing any opinion on the merits of the case, We feel it a fit case wherein the matter can be remanded back to the 1st respondent to rehear the matter on certain conditions. Accordingly, the order impugned is set aside and the matter is remanded back to the 1st respondent to rehear the matter after affording an opportunity to the petitioner herein, without any prejudice to contest the waiver application, on the condition of the petitioner depositing Rs.10,00,000/- (Rupees Ten Lakhs only) within a period of four weeks from today. On such deposit, the waiver application shall be disposed of.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Rohini

Date: 4th December, 2007
Nn/Gurc.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:25661 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

04/12/2007